

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Section 272(f)(1) Sunset of the BOC Separate)	WC Docket No. 02-112
Affiliate and Related Requirements)	
)	
2000 Biennial Regulatory Review)	CC Docket No. 00-175
Separate Affiliate Requirements of Section)	
64.1903 of the Commission's Rules)	

REPLY COMMENTS

The Coalition of Incumbent Independent Local Exchange Carriers ("Coalition"), by its attorney, hereby submits these reply comments in response to the initial comments filed in this proceeding.¹

In its "Comments," the Coalition requests that the Commission eliminate the "separate affiliate requirement" and related requirements applicable to Coalition members and to classify them as "non-dominant" in connection with their furnishing of interstate domestic and international interexchange services on an in-region basis.² That result would remove regulatory constraints first

¹ "Further Notice of Proposed Rulemaking," FCC 03-111, released May 19, 2003; 68 FR 32007, May 29, 2003). The Coalition consists of certain companies that furnish long distance services either via separate affiliates or separate corporate departments consistent with the requirements set forth in Section 64.1903 of the Commission's Rules and Regulations, 47 CFR § 64.1903. A listing of the carriers comprising the Coalition is appended to its Comments.

² The Coalition's position is unqualifiedly supported by NTCA ("Comments of the National Telecommunications Cooperative Association," dated June 30, 2003), ITTA ("Comments of the Independent Telephone & Telecommunications Alliance," dated June 30, 2003), USTA ("Comments of the

imposed on independent local exchange telephone companies twenty years ago and which, experience has shown, no longer are needed.

The Coalition takes no position on regulation of the Bell Operating Companies (“BOCs” or “RBOCs”) other than to note that their size, and the scale and scope of their operations, are so dramatically different from those of Coalition members and other independent local exchange companies that differing regulatory treatment would be justified.³ In this regard, the Coalition notes that the structural requirements currently applicable to independent telephone companies have been in place for some time now, as distinct from the unique statutory requirements applicable to RBOCs once they gain entry into long distance. Finally, the Coalition believes that elimination of the existing regulatory constraints on its members’ operations would not leave consumers, competitors or the Commission without adequate recourse under the Communications Act.

Consistent with Commission deregulatory approaches employed in the past, the requirements currently applicable to independent telephone company long distance operations should be removed. Based on experience over the past

United States Telecom Association,” dated June 30, 2003), GVNW Consulting (“Comments of GVNW Consulting, Inc.,” dated June 30, 2003), and Sprint (“Comments of Sprint Corporation,” dated June 30, 2003, at 3, 14-15).

³ As SBC Corporation recognizes, “independent LECS tend to have smaller service areas than BOCs, and those areas tend to be less densely populated.” Comments of SBC Communications Inc., dated June 30, 2003, at 38. Working Assets asserts that “[n]o other telecommunications provider ... has access to residential customers comparable to that available to the RBOC in its capacity as the dominant local exchange carrier.” “Comments of Working Assets Long Distance on the Further Notice of Proposed Rulemaking,” dated June 30, 2003, at 4. And AT&T recognizes the “very different incentives and abilities” of independent local exchange companies and BOCs when it concludes “there is a rational basis for maintaining the independent LECs’ nondominant status and distinguishing them from the BOCs.” “Comments of AT&T Corp.,” dated June 30, 2003, at 74-76.

several years, in particular, the absence of instances in which independent telephone companies used their positions to injure competition or consumers, it is time to free these companies from the separate affiliate requirement and related regulation.⁴ Such action would be in keeping with a regulatory approach that involves the implementation of deregulation on a reasoned and measured basis over time.⁵

Most comments focus on the RBOCs, which is not surprising given that the major thrust of this proceeding concerns the “sun setting” of the statutory separate affiliate requirement that pertains uniquely to them.⁶ The RBOCs strongly support their deregulation, and their detractors just as strongly support the continued employment of regulatory measures they believe essential to protecting consumers and competition. However, as indicated, there is general agreement that the Commission should not apply a “one-size-fits-all” model with

⁴ The current rule, adopted in 1997, requiring independent telephone companies to provide long distance operations via separate affiliates was “not based on any historic evidence of anticompetitive or discriminatory conduct by independent LECs.” (ITTA Comments at 2.) The ITTA notes that, prior to that time, independent LECs furnished local and interexchange services on an integrated basis “with no evidence of systematic discrimination against unaffiliated carriers.” This view is echoed by USTA: “With regard to independent ILECs, prior to 1997, they provided local and long distance services on an integrated basis without any concern by the Commission There was no material evidence of harm justifying the imposition of the separate affiliate or separate corporate divisions requirements then and none exists today.” (USTA Comments at 3.)

⁵ Perhaps the best example of this approach was the deregulation of competitive interexchange service providers. See *Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) and its progeny, frequently referred to as the “Competitive Carrier Proceeding.” Over the years, “non-dominant carrier” regulatory status was accorded an expanding number of carrier-types following Commission determinations that risks they posed to consumers and competition were not significant and, in any event, were manageable.

⁶ See “MCI Comments,” dated June 30, 2003, at 1. (“MCI’s comments focus on the provision of interLATA service by the BOCs.”) “Comments of AT&T Wireless Services, Inc., dated June 30, 2003, at 1. (“The Commission seeks comment on the appropriate regulatory classification and regime to govern Bell Operating Companies ...”). See, also, “Comments of Sage Telecom, Inc.,” dated June 30, 2002.

respect to the regulation of RBOCs and independent telephone companies.⁷

One party states:

“ . . . the Commission may want to consider exempting rural LECs . . . from any requirement to provide long distance services through a separate subsidiary or any new reporting or marketing restrictions adopted herein. Most rural LECs are very small companies that do not have the resources necessary both to provide quality service to their customers and to comply with detailed regulations. Their limited resources would be better spent on the former activity, rather than on the latter. Moreover, because rural LECs generally serve so few customers, they cannot realistically affect the long distance market.⁸

The Coalition concurs in this position, but sees no reason not to include *all* independent local exchange companies – not just rural entities -- in that deregulatory undertaking.

When it adopted the separate affiliate rule currently applicable to independent telephone companies, the Commission concluded that local exchange carriers lacked the ability to raise prices for long distance service by restricting their output of those services.⁹ No one seriously believes they have that capability today. Indeed, the competitiveness of the long distance market today is as great, if not greater, than it was when the Commission implemented the current requirements.¹⁰

⁷ See ITTA Comments at 11.

⁸ “Comments of Americatel Corporation,” dated June 30, 2003, at n. 18.

⁹ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15,756, 15,763, 15,862-63 (1997) (*LEC Reclassification Order*).

¹⁰ In recognizing the “notable success” of competition following implementation of the Telecommunications Act of 1996, Chairman Powell spoke at some length about competitive inroads into local markets and then indicated “[c] ompetition also has increased exponentially in the long distance market.” See Written Statement of Michael K. Powell on “Competition Issues in the Telecommunications Industry,” Committee on Commerce, Science, and Transportation, United States Senate, January 14, 2003, at 2-5.

And, when the Commission concluded “only the emergence of competition in the local exchange and exchange access markets will eliminate independent LECs’ ability and incentive to engage in anticompetitive activity,”¹¹ it established the basis for further deregulation. That basis now exists. Competition in local exchange markets has grown, as intended, during the past four years and continues to grow at a rapid pace, as the Coalition showed in its Comments. Thus, there clearly are constraints today on the ability of independent local telephone companies to engage in anticompetitive behavior.

Finally, it should be emphasized, many independent telephone companies offer long distance service not only to avail themselves of the business opportunity presented but, also, to be in a position to furnish competitive alternatives and conveniences to their local exchange service customers, for example, in the form of a single invoice for telecommunications service. In this endeavor, they compete against larger regional and nationwide service providers whose product lines are extensive in both scope and reach. Accordingly, the smaller independent telephone companies have no incentive to act in a manner contrary to federal and state requirements; or that would burden their local exchange services and customers; or that would prevent those customers from receiving long distance service from other providers.

The Coalition submits the time is ripe to allow independent telephone companies to provide in-region interstate domestic and international interexchange services on an integrated basis, without subjecting them to

¹¹ *LEC Reclassification Order* at 15866.

dominant carrier regulation. This would permit Coalition members to realize operational efficiencies not available today while, at the same time, remaining subject to the requirements of the Communications Act, including complaint and other enforcement procedures. Given, however, their sterling record over the past several years in providing local exchange and long distance services without adverse consequence, it is highly unlikely that reliance on any remedial measures will be necessary.¹²

In view of the foregoing, the Coalition requests that the Commission consider, and act upon, its Comments and these Reply Comments in this proceeding.

Respectfully submitted,

COALITION OF INCUMBENT
INDEPENDENT LOCAL EXCHANGE
CARRIERS

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¹² Given the long-standing involvement of independent local exchange companies in the provision of interexchange and international long distance service, it is assumed that use of the term "ILEC" by the Ad Hoc Telecommunications Users Committee is intended to be synonymous to, and interchangeable with, "BOC," as distinct from any intent to include independent local exchange companies under that heading. Any other conclusion would render untenable the Committee's position that it would be premature for the Commission to consider non-dominant classification at this time. *See* "Comments of Ad Hoc Telecommunications Users Committee," dated June 30, 2003, at 13-17. In this regard, AT&T's expressed concern for premature deregulation is limited exclusively to the BOCs. *See* Comments of AT&T Corp., at 8.

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CERTIFICATE OF SERVICE

I, Elizabeth Mugo, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments" was served on this 28th day of July 2003, by first class, U.S. mail, postage prepaid to the following parties:

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